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May 24, 2004

Joseph DuBray, Jr.
Director, Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
Room C-3325
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Amendment of 41 C.F.R. 60-1

Dear Mr. DuBray:

On March 29, 2004, the Office of Federal Contract Compliance Programs of the United States Department of Labor ("OFCCP") published a Notice of Proposed Rulemaking amending 41 C.F.R. 60-1. The Notice addressed a federal contractor's obligation to solicit race and gender data for agency enforcement purposes. Please accept this letter as L-3 Communications Corporation's response to that Notice.

On March 4, 2004, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs of the Department of Labor, the Department of Justice, and the Office of Personnel Management (the "UGESP" Agencies), published Additional Questions and Answers to clarify and provide a common interpretation of the Uniform Guidelines on Employee Selection Procedures as they relate to the Internet and related technologies. One Question and Answer specifically addressed the definition of "applicant" in the context of the Internet and related electronic data processing technologies. Subsequently, the OFCCP published its Notice of Proposed Rulemaking amending its regulations to further clarify the definition of applicant and ensure its enforcement needs are satisfied. L-3 Communications Corporation supports the OFCCP's definition of Internet Applicant and strongly suggests that it be used as the sole definition of applicant regardless of how the expression of interest is communicated to the employer. Moreover, we urge all the UGESP Agencies to follow the OFCCP's lead.

The OFCCP's proposed definition of Internet Applicant is as follows:

- (1) Internet Applicant means any individual who:
 - (i) Submits an expression of interest in employment through the Internet or related electronic data technologies;
 - (ii) The employer considers the individual for employment in a particular open position;

- (iii) The individual's expression of interest indicates the individual possesses the advertised, basic qualifications for the position; and,
- (iv) The individual does not indicate that he or she is no longer interested in employment in the position for which the employer has considered the individual.

69 Fed. Reg. 16,449 (March 29, 2004).

Criteria (i), (ii), and (iv) mirror the recent proposed definition of applicant for the Internet and related electronic data processing technologies published by the UGESP Agencies. See 69 Fed Reg. 10152 (March 4, 2004). However, criteria (iii) is a departure from the UGESP Agencies' definition and makes explicit something the UGESP Agencies only tacitly admitted: a job seeker's expression of interest must objectively demonstrate that the individual possesses the advertised qualifications required by the employer before a job seeker is converted into an applicant. 69 Fed. Reg. 16449 (March 29, 2004) and 69 Fed Reg. 10156 (March 4, 2004). Criteria (iii) is critical to any definition of applicant since Executive Order 11246, which the regulations implement, only requires employers to "state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin." Exec. Order No. 11246, § 202(2), 30 Fed. Reg. 12319 (September 24, 1965) (emphasis added). This close tie to Executive Order 11246 makes criteria (iii) an integral element of the definition of applicant, one that should not be limited to Internet Applicants but should apply to all job seekers.

Although the OFCCP published its proposed definition in response to the growth of the Internet in employment and recruiting practices, logic dictates that it apply to all submissions of interest. First, the proposed definition furthers the mandates of Executive Order 11246 by ensuring that all qualified applicants are considered "for employment without regard to race, color, religion, sex or national origin." Exec. Order No. 11246, § 202(2), 30 Fed. Reg. 12319 (September 24, 1965). Accordingly, it is relevant to all submissions of interest. Second, requiring a job seeker to meet the advertised qualifications does not address some unique feature of the Internet. To the contrary, this criteria furthers the OFCCP's general enforcement needs and therefore, is equally applicable to a job seeker who mails a paper resume to the employer and one who makes his interest known through the Internet. Third, different definitions of applicant are not justifiable. The major difference between a job seeker from an Internet source and one who submits a paper resume is the ease of submitting voluminous numbers of resumes, not any characteristic of the individual. Fourth, failure to apply the same definition to all submissions of interest will result in inaccurate, inconsistent and ineffectual data, thereby hindering the OFCCP's enforcement of Executive Order 11246. The data used by the OFCCP would contain information on job seekers who became Internet Applicants because they met the advertised requirements and others who became applicants simply because they followed the employer's procedures relating to submissions of interest. Comparing a job seeker with an accounting degree and one with only a high school education for a job that requires an accounting degree will vitiate the reliability of the analysis and will not produce meaningful results.

The arguments that support the OFCCP's use of a single definition of applicant also apply to the other UGESP Agencies. Use of separate definitions could result in the anomalous situation where two agencies, seeking to enforce the same Executive Order, make different compliance determinations. Additionally, employers' recordkeeping burdens would not be lessened. Employers must maintain records in case of an audit by any of the UGESP Agencies. If certain

agencies other than the OFCCP expect data on all job seekers who express an interest in a particular job, employers would be forced to collect all of that data.

The OFCCP's attempt to update the definition of applicant consistent with its enforcement objectives and address employers' onerous recordkeeping burdens would be rendered nugatory.

For all these reasons, the OFCCP's proposed definition should be used by all UGESP Agencies and apply to all job seekers, regardless of the medium used to transmit the information to the employer.

A handwritten signature in blue ink that reads "Kenneth W. Manne". The signature is written in a cursive, flowing style.

Kenneth Manne
Vice President – Human Resources